

of Defense officials and Justice as prescribed by directives of the Secretary of Defense (SECDEF).

(3) SECNAV or appropriate Civilian Executive Assistants shall be consulted and kept advised of cases with unusual implications. CHINFO shall be consulted and kept advised on cases having public affairs implications.

(i) *Response to the requester.* (1) When an appellate authority makes a determination to release all or a portion of records withheld by an IDA, a copy of the records released should be promptly forwarded to the requester after compliance with any procedural requirements, such as payment of fees.

(2) Final denial to provide a requested record or to approve a request to waive or reduce fees must be made in writing by the appellate authority. The response shall include the following:

(i) An explanation of the basis for the denial including the applicable statutory exemption(s) invoked.

(ii) If the final denial is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing Executive Order, is based on a declassification review, and the review confirmed the continuing validity of the security classification.

(iii) The response shall advise the requester that the material denied does not contain reasonably segregable portions.

(iv) The response shall advise the requester of the right to judicial review.

(v) The final denial shall include the name and title of the official responsible for the denial.

(vi) An information copy, less attachments, should be provided to CNO (N09B30).

(j) *Judicial actions.* A requester may seek an order from a U.S. District Court to compel release of a record after exhaustion of administrative remedies, i.e., the IDA or appellate authority denied release or when a naval activity failed to respond within the prescribed time limits.

(1) *Burden of proof.* The naval activity has the burden of proof to justify its refusal to provide a record. The court evaluates the case de novo (anew) and

may examine any requested record in camera (in private) to determine whether the denial was justified.

(2) *Actions by the court.* (i) When a naval activity fails to make a determination within the statutory time limits but can demonstrate due diligence in exceptional circumstances, the court may retain jurisdiction and allow the naval activity additional time to complete its review of the records.

(ii) If the court determines that the requester's complaint is substantially correct, it may require the United States to pay reasonable attorney fees and other litigation costs.

(iii) When the court orders the release of denied records, it may also issue a written finding that the circumstances surrounding the withholding raise questions whether civilian personnel acted arbitrarily and capriciously. In these cases, the special counsel of the Merit Systems Protection Board will conduct an investigation to determine whether or not disciplinary action is warranted. The naval activity is obligated to take the action recommended by the special counsel.

(iv) When a naval activity fails to comply with the court order to produce records that have been withheld improperly, the court may punish the responsible official for contempt.

(3) *Non-United States Government source information.* A requester may bring suit in a U.S. District Court to compel the release of records obtained from a non-government source or records based on information obtained from a non-government source. The source shall be notified promptly of the court action. If the source advises that it is seeking court action to prevent release, the naval activity shall defer answering or otherwise pleading to the complaint as long as permitted by the Court or until a decision is rendered in the court action initiated by the source, whichever is sooner.

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